

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLACER HILLS UNION SCHOOL
DISTRICT.

OAH CASE NO. 2013060210

ORDER DENYING STUDENT'S
PEREMPTORY CHALLENGE

On September 5, 2013, Robert K. Closson, advocate for Student, filed a notice of peremptory challenge to Administrative Law Judge (ALJ) Rebecca Freie in the above captioned matter. Student's challenge is made on the grounds that a duly noticed prehearing conference went forward after his advocate failed to appear.

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer. A party is entitled to one peremptory challenge (disqualification without cause) to an ALJ assigned to an Office of Administrative Hearings (OAH) hearing. (Cal. Code Regs., tit. 1, § 1034, subds. (a) & (b); Gov. Code, § 11425.40, subd. (d).) In no event will a peremptory challenge be allowed if it is made after the hearing has commenced. In addition, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) A peremptory challenge is not allowed on reconsideration or remand, and cannot be made after a hearing has begun. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

A prehearing conference in this matter was held on August 30, 2013. Dr. Closson failed to appear at a duly noticed proceeding, and his failure to appear does not negate the fact that a duly noticed prehearing conference was conducted. Accordingly, Student's peremptory challenge is not timely made and is denied.

IT IS SO ORDERED.

Dated: September 9, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings